Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal (Against Acquittal) No. 1083 of 2001
(Old No. 79 of 1985)

The State …….. Appellant

Versus

Umed Singh
R/o Village Singlai,
Patti Ogla, Tehsil Didihat,
District Pithoragarh

…… Respondent

Mr. H.C. Pande, Asstt. Government Advocate of the appellant-State.
Mr. Dharamveer Sharma, Senior Advocate assisted by Mr. B.S. Parihar, Advocate for the respondent.

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dated: June 29, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 378 of the code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against judgment and order dated 09.10.1984, passed in Session Trial No. 09 of 1984, by the then learned Sessions Judge, Pithoragarh, whereby the accused/ respondent Umed Singh has been acquitted of the charge of offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.). This appeal against acquittal was originally filed before the Allahabad High Court in February, 1985. The leave was granted and appeal was admitted on 10.02.1987 by said

Court. Thereafter, this appeal has been received by transfer by this Court, for its disposal, under Section 35 of the U.P. Re-organization Act, 2000.

2) We heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 17.07.1983, at about 6:30 P.M., P.W.1, Laxmi Dutt and PW.2, Girdhar Singh (village Pradhan) along with accused / respondent Umed Singh were all sitting at the tea shop of Bhawani Datt in village Singali, Patti Ogla, Tehsil Didihat, District Pithoragarh. Suddenly, some altercation started between accused / respondent Umed Singh and P.W. 2, Girdhar Singh. Umed Singh told Girdhar Singh, P.W. 2, that he has spoiled the life of his (accused / respondent's) brother and now he (accused will spoil the life of P.W. 2, Gridhar Singh. Umed Singh told Gridhar Singh, P.W. 2, that he has spoiled the life of his (accused/ respondent's) brother and now he (accused) will spoil the life of P.W. 2, Girdhar Singh. On the intervention of Laxmi Datt (P.W. 1) accused /respondent Umed Singh was sent away. A few paces away from the shop of Bhawani Datt, Umed Singh (accused / respondent) met Madho Singh (deceased). On enquiry, Umed Singh told Madho Singh (deceased) that he was going to finish Girdhar Singh (P.W. 2). Madho Singh (deceased) asked umed Singh (respondent) to finish him of first. At this, accused / respondent Umed Singh caught hold the hands of Madho Singh (deceased) and pulled him down. On the intervention of the other persons present there, the matter ended up. But again, when Madho Singh (deceased) proceeded barely some paces ahead, the accused / respondent Umed Singh, pulled him (deceased) down by catching hold his hand, as a result of which Madho Singh (deceased) fell down from kuchcha road in the hill and

became unconscious. The incident was witnessed by P.W 1, Laxmi Dutt, P.W. 2, Girdhar Singh and others. As soon as Deb Singh, brother of the deceased, received the information about the said incident, he immediately rushed to the spot and with the help of other persons took injured Madho Singh to the Primary Health Centre at Singali. As no doctor was available there, Madho Singh (deceased) was taken to the Hospital at Didihat. However, Madho Singh succumbed to his injuries on way to the Hospital. Thereafter, Deb Singh, brother of the deceased, lodged the first information report (Ext. A -1) to the Patwari, Ogla, on the very day i.e. 17.07.1983, at 9:45 P.M. (In Uttaranchal hills, in certain rural areas, Revenue officer are given police powers). Firstly, the crime was registered under Section 307 of I.P.C. by the Patwari, but on the death of Madho Singh later on way to Hospital, the crime was converted to one under Section 302 of the I.P.C. Thereafter, the Patwari prepared a check report (Ext. A- 2) of the First Information Report (Ext. A -1). The accused/ respondent was arrested on the next day i.e. 18.07.1983. On 18.07.1983, the inquest report (Ext. A -8) was prepared of the dead body of deceased which was sent for postmortem examination. The Patwari also got prepared site plan of the place of occurrence (Ext. A -3). He further prepared photo sketch of the dead body (Ext. A -9), Police form No. 13 (Ext. A -10), later to the Chief Medical Officer requesting for the postmortem of the dead body (Ext. A -11), sample seal (Ext. A -12. The Patwari also prepared memo of recovery of blood stained and simple soil and stone (Ext. A -4) and (Ext. A -5). P.W. 4, Dr. Bhupal Singh Bisht conducted postmortem examination on

the dead body of deceased Madho Singh. After recording that statements of witnesses and conclusion of investigation, P.W. 3, Mohan Singh (Patwari / Investigating Officer) submitted charge sheet (Ext. A -14) against the accused/ respondent for his trial under Section 302 of the I.P.C. The learned Magistrate on receiving the charge sheet registered the same, and after providing necessary copies of the papers to the accused, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions. The learned Sessions Judge, after hearing the prosecution and accused person, framed charge against the accused / respondent Umed Singh of the offence punishable under Section 302 of the I.P.C. The accused / respondent pleaded not guilty and claimed to be tried.

4) The prosecution got examined P.W. 1, Laxmi Datt, eyewitness; P.W. 2, another eyewitness; P.W.3, Mohan Ram, Investigating Officer; P.W. 4, Dr. Bhupal Singh Bisht, who conducted the post mortem examination of the dead body of Madho Singh, and P.W. 5 Chanchal Singh, who took the dead body along with necessary papers for the postmortem examination. The oral as well as documentary evidence was put to the accused / respondent under Section 313 of Cr.P.C. In his reply under Section 313 of the Cr.P.C., the accused / respondent alleged that the evidence adduced against him was false and he has been falsely implicated in the case due to enmity. No evidence in defence was adduced by the accused / respondent. Learned Sessions Judge after going through the evidence on record found that the charge framed against the accused in not proved beyond reasonable doubt and, as such, giving him

benefit of doubt, acquitted the accused of the charge framed against him. Aggrieved by said judgment and order dated 09.10.1984, passed by the trial court, the State has filed this appeal against acquittal of aforesaid accused, with the leave of the court.

5) Before further discussions, it is pertinent to mention here, the ante mortem injuries found by P.W. 4, Dr. Bhupal Singh Bisht, at the time of conducting postmortem examination, on 19.07.1983. The postmortem examination report (Ext. A -15) shows following ante mortem injuries on the person of the deceased:

i) ***Abraded contusion 3 cm X 1 cm on pmt of left shoulder just below lateral border of left collar bone.***
ii) ***Abrasions in an area of 4 cm X 3 cm on the left Zygoma.***
iii) ***Abraded contusion on the medieval side of right lower leg (Tibia) size 12 cm X 2.5 cm, direction vertical.***
iv) ***Abraded contusion 2.5 cm X 1 cm outer sided, middle of left little finger.***
v) ***Lacerated wound 2 cm X 1.5 cm X bone deep on the occipital region, 2 cm right to midline.***

The Medical Officer also found fracture of the occipital bone corresponding to injury No. 5. Lacerated in occipital region. Multiple haemorrhage diffused (intra cerebral haemorrhage) largely in front of left frontal lobe and right parietal and occipital region. According to the Medical Officer, who conducted the postmortem examination, the death for Madho Singh was due to shock and haemorrhage as a result of head injury.

6) From the above evidence, it is clear that Madho Singh died homicidal death due to cerebral haemorrhage, caused by ante mortem head injury. Now, it is to be seen whether respondent Umed Singh has caused the said injury. It is not disputed that Umed Singh was not armed with any weapon. First Information Report (Ext. A -1) itself shows that Madho Singh (deceased) intervened as a third person in the quarrel between P.W. 2 Girdhar Singh and accused Umed Singh. It is also mentioned in the First information Report that Madho Singh received injuries in that scuffle with accused Umed Singh. Deb Singh (informant) who lodged First Information Report for the reasons best known to the prosecution, has not been examined. P.W. 1 Laxmi Datt, the alleged eye-witness says that when accused Umed Singh was hurling abuses at Girdhar Singh (P.W. 2), Madho Singh (deceased) objected to it. After his intervention, the quarrelling parties were separated but later on accused Umed Singh on the way got hold of Madho Singh and threw him from kaccha road due to which he died. This part of prosecution story nowhere finds place in the First Information Report. P.W. 2 Girdhar Singh, eye-witness, states that accused Umed Singh pushed down Madho Singh due to which he received head injury. This version of prosecution story, does not get support from First Information Report. As such, the trial court has rightly found accused Umed Singh not guilty of the charge as the prosecution has failed to prove its case beyond reasonable doubt. We have no reason to disagree with the finding of the learned trial court.

7) Learned Assistant Government Advocates argues that the trial court has erred in law in not holding accused/respondent Umed Singh guilty, at least of the charge of offence punishable under Section 304 Part-II I.P.C. We see no force in the contention for the reason that the prosecution story, as narrated in First Information Report is different from what P.W. 1 Laxmi Datt (eye-witness) and P.W. 2 Girdhar Singh, eye-witness of the prosecution. Informant Dev Singh has not been examined by the prosecution. In the circumstances, it cannot be said that the prosecution has been successful in proving beyond reasonable doubt, even the case of culpable homicide not amounting to murder, against the accused/respondent.

8) The view taken by the trial court cannot be said to be unreasonable. Mere possibility of another view is not sufficient to reverse the judgment of acquittal.

9) For the reasons as discussed above, we are of the view that the accused / respondent was rightly acquitted of the charge of the offence punishable under section 302 of the I.P.C. on the ground that the charge was not proved beyond reasonable doubt against him. As such there appears no error of fact or that of law committed by the trial court in acquitting the accused / respondents. Accordingly, the appeal is liable to be dismissed. The same is hereby dismissed.

(Prafulla C. Pant, J.) (Rajeev Gupta, C.J.)

Dt. June29, 2006.
H.Negi